

Applicant(s): F. Fricdland  
Application No.: 10/678,970  
Examiner: M. Brown

### Remarks

Claims 1-20 are pending in the application and are presented for the Examiner's review and consideration. Claims 1, 5-7, 9, and 10 have been amended and claims 11-20 have been added. Applicant believes the claim amendments, additions, and accompanying remarks herein serve to clarify the present invention and are independent of patentability. No new matter has been added.

#### §103(a) Claim Rejections

Claims 1-2 and 4-10 were rejected under 35 U.S.C. §103(a) as unpatentable over U.S. Patent No. 6,656,139 to Zwezdaryk ("Zwezdaryk") in view of U.S. Patent No. 4,091,805 to Clark ("Clark"). For the reasons set forth below, Applicant respectfully submits that these rejections should be withdrawn.

Zwezdaryk discloses a personal vibrator that is positionable by a user in varying configurations. (Col. 1, lns. 6-7). The vibrator 10 has a base member 12 and a plurality of elongated flexible elements 14 extending from the base member 12 for contacting a user. (Col. 2, lns. 6-9). The vibrator 10 is preferably hand-shaped with the base member 12 representing the wrist and palm features of a hand, and the elements 14 representing the fingers of a hand. (Col. 2, lns. 13-15). Base member 12 is hollow and contains a first motor 22, a second motor 24 and an actuator 26, mounted between the first motor 22 and at least one of the elements 14. (Col. 2, lns. 28-31). The elements 14 are made to replicate the fingers on a human hand and preferably are in similar proportion to a hand. (Col. 2, lns. 52-54). The elements 14 are positionable by the user in a plurality of configurations, shown in FIGS. 3-8. (Col. 2, lns. 11-12). In order to provide a life-like feel to the vibrator 10, a cover 20 is attached to the exterior surface of the base member 12 and the elements 14. (Col. 2, lns. 20-22).

As such, Zwezdaryk discloses a vibrator in the shape of a hand having a life-like feel. The vibrator includes a hollow base (wrist and palm) and a plurality of elongated flexible elements (finger). A least one motor is mounted within the hollow base portion to provide vibration. The fingers are positionable by a user in a plurality of configuration as desired by the

Applicant(s): F. Friedland  
Application No.: 10/678,970  
Examiner: M. Brown

user. Zwezdaryk does not disclose that the vibrator is made in sheet form nor that the motor is attached to a surface of the vibrator. Furthermore, the Examiner specifically states that "the motor is fixed between the top and bottom of the main body."

Clark discloses a vibrating back scratcher. (Col. 1, lns. 5-6). The vibrating back scratcher of the invention comprises an elongated rod 1 (FIGS. 1 to 3) having spaced opposite first and second ends 2 and 3 (FIGS. 1 and 2). (Col. 1, lns. 29-31). An artificial hand 4 (FIGS. 1 and 2) of any suitable material such as, for example, plastic, has a plurality of fingers bent in scratching position and a wrist 5. (Col. 1, lns. 32-34). An electric vibrator device 8 of any suitable type (FIGS. 3 and 4) is provided in the handle 6 in operative proximity with the second end 3 of the rod 1 for vibrating the rod in axial directions, indicated by arrows 9 and 10 of FIG. 3. (Col. 2, lns. 37-39).

As such, Clark discloses a vibrating back scratcher having a scratching portion in the shape of a hand. The fingers of the hand are bent in scratching position. An electric vibrating device is mounted in the handle portion. Similar to Zwezdaryk, Clark does not disclose that the vibrator is made in sheet form nor that the motor is attached to a surface of the vibrator.

In contrast, the present invention discloses a novel massager and more particular a battery operated novel massager to simulate a hand massage. (¶ [0002]). The novel massager consists of a relatively thin sheet 10, of a flexible plastic material, such as polycarbonate, that has been molded in the form of a fanciful configuration of a hand, having a heel portion 22 at one end and splayed thumb and fingers 12-20 at the other end representative of the digits of a hand, such as, a thumb (12) and four fingers (14-20). (¶ [0024]). The digits or elongations (elongated plates) constituting the fingers 14-20 and the thumb 12 are flexible and cantilever out from the main portion 40 of the sheet 10 terminating in free ends and are downwardly curved at their extremities, terminating in bent portions 24-32, which are bent downwardly at a generally 90 degree angle with respect to the remainder of the elongations or digits. (Id.) On the top surface of the sheet 10 at the rear 22 is fixed a battery box 60 with a hinged top 62 that is provided with an easily operable latching device 68a, 68b with the box 60 to be able to shut the box 60 when loaded with a pair of batteries (not shown), and to access the box 60 when necessary to change the batteries. (¶ [0025]). The box 60 is provided with suitable contacts 64 to engage the

Applicant(s): F. Friedland  
Application No.: 10/678,970  
Examiner: M. Brown

batteries, and in turn, the contacts 64 are connected via wires 66 to the contacts 76 of a known conventional vibration motor 70 that is mounted on the top surface of the sheet 10, in the region designated as 40, with its shaft 72 and eccentric flywheel 74 protruding through an opening in the sheet 10. A switch 80 is interposed in one of the wires 66 to serve as an ON-OFF switch to enable manual control of the vibration motor 70. (Id.). Although the vibration motor 70 and its parts has been shown to be positioned above the sheet 10, it is equally feasible for the motor 70 to lie entirely below sheet 10, simply by inverting the housing 100 and fixing to the underneath surface of sheet 10. (¶ [0027]).

As such, the present invention discloses a novel massager in the shape of a hand. The massager is formed of a relatively thin sheet a flexible plastic material, where the vibration motor is mounted to an upper surface of the sheet. Alternatively, the vibration motor can be mounted to a lower surface of the sheet.

Independent claim 1 now recites, *inter alia*, a massage device including a main body in sheet form having upper and lower surfaces. The main body is composed of a flexible plastic material and fancifully configured in the shape of a hand with fingers splayed by elongated portions extending from one end thereof. At least some of the elongated portions of the main body that project from one end thereof serving as flexible fingers defining substantial contact areas for massage. A vibration motor is fixed to at least one of surfaces of the main body for producing vibrations in the main sheet that are transmitted to the substantial contact areas for effecting a massage when the vibration motor is activated and the substantial contact areas are contacted with a person to be massaged. Claim 10 has been similarly amended.

As noted above, the combination of Zwezdaryk and Clark fails to disclose a vibrator in the shape of hand in sheet form having upper and lower surfaces. Zwezdaryk specifically discloses that the base member is hollow. Furthermore, there is no disclosure in Clark that would motivate the Zwezdaryk device to be provided in sheet form. Additionally, forming the Zwezdaryk device a sheet would render the fingers of the device incapable of providing a life-like feel.

Additionally, in both the Zwezdaryk and Clark devices the vibrational motor is mounted internally, in the hollow base member Zwezdaryk device and in the handle of the Clark. Neither

Applicant(s): F. Friedland  
Application No.: 10/678,970  
Examiner: M. Brown

Zwezdaryk nor Clark disclose that the motor is mounted on a surface of the devices.

Furthermore, the Examiner stated that it would have been obvious to one having ordinary skill in the art at the time the invention was made that the elongated portions disclosed by Zwezdaryk could be fabricated in a downward bent position as taught by Clark. However, Zwezdaryk discloses that the fingers are positionable by the user in a plurality of configurations, as desired by the user. As such, there would be no motivation to fabricate finger in a downward bent position. Additionally, the Clark device is disclosed as vibrating back scratcher. Whereas, the Zwezdaryk device is disclosed as a vibrator for sexual stimulation. There would be no motivation to combine a back scratcher with a sexual stimulation device.

In light of the foregoing, independent claims 1 and 10 are respectfully submitted to be patentable over Zwezdaryk in view of Clark. As claims 2 and 4-9 depend from claim 1 these dependent claims necessarily include all the elements of their base claim. Accordingly, Applicant respectfully submits that the dependent claims are allowable over Zwezdaryk in view of Clark at least for the same reasons.

Claim 3 was rejected under 35 U.S.C. §103(a) as unpatentable over the reference as applied to claim 1 above, and further in view of U.S. Patent No. 5,113,849 to Kuiken et al. ("Kuiken"). Claim 3 depends from claim 1. As noted above, Applicant submits that claim 1 is patentable over Zwezdaryk in view of Clark. The further combination of Kuiken does not alleviate the deficiency of Zwezdaryk and Clark. Accordingly, Applicant submits that claim 3 is patentable over Zwezdaryk in view of Clark and in further view of Kuiken for at least the same reasons.

#### New Claims

Applicant has added new claim 11-20. Applicant submits that the new claims are supported by the specification and no new matter has been added.

As claims 11-19 depend from claim 10 and claim 20 depends from claim 1 these dependent claims necessarily include all the elements of their base claim. Accordingly, Applicant respectfully submits that the dependent claims are in condition of allowance.

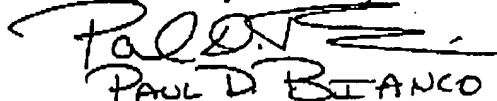
Applicant(s): F. Friedland  
Application No.: 10/678,970  
Examiner: M. Brown

Conclusion

In light of the foregoing remarks, this application is now in condition for allowance and early passage of this case to issue is respectfully requested. If any questions remain regarding this amendment or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

No fee is believed to be due. However, please charge any required fee (or credit any overpayments of fees) to the Deposit Account of the undersigned, Account No. 500601 (Docket No. 7320-X03-006).

Respectfully submitted,

  
PAUL D. BIANCO

Martin Fleit, Reg. # 16,900

*Fol*

Customer Number: 27317  
Martin Fleit  
FLEIT KAIN GIBBONS GUTMAN BONGINI & BIANCO  
601 Brickell Key Drive, Suite 404  
Miami, Florida 33131  
Tel: 305-931-9620; Fax: 305-931-9627  
e-mail: [mfleit@focusonip.com](mailto:mfleit@focusonip.com)